



STATE OF INDIANA

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October 28, 2011

Mr. David J. Lichtenberger
Assistant Corporation Counsel
1601 City County Building
200 East Washington
Indianapolis, Indiana 46204
Via email: david.lichtenberger@indy.gov

Re: Informal Inquiry 11-INF-62; Marion County Coroner

Dear Mr. Lichtenberger:

This is in response to your informal inquiry regarding the Marion County Coroner ("Coroner"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

On August 9, 2011, Howard L. Steele filed a formal complaint with the Public Access Counselor Office's against the Coroner. On September 8, 2011, the Public Access Counselor issued Advisory Opinion 11-FC-195, which found that the Coroner violated the APRA by failing to respond to Mr. Steele's public records request. You advise that the Coroner never received Mr. Steele's original records request or the formal complaint filed with the Public Access Counselor's Office. You have now submitted a response on behalf of the Coroner to the formal complaint, and have requested an informal opinion as to whether the Coroner would have violated the APRA if such a response had been filed.

BACKGROUND

In Mr. Steele's complaint, he alleged that on July 6, 2011 he submitted a written request to the Coroner for the autopsy report performed on Thomas Reeves in March 1980. Included in his request were copies of the photos from the crime scene where Mr. Reeves was found. As of August 9, 2011, the date he filed his complaint with the Public Access Counselor's Office, he had not received a response from the Coroner.

You have provided that the Coroner never received Mr. Steele's original records request or notification that he had filed a formal complaint with the Public Access Counselor. You were not made aware of the issue until receiving a copy of the Public

Access Counselor's Advisory Opinion 11-FC-195. After being made aware of the requests, you contacted Mr. Steele on behalf of the Coroner in writing and provided that there were twenty-one (21) pages of records responsive to his request. You noted that certain records had been redacted pursuant to I.C. § 5-14-3-4(a)(12). You further provided to Mr. Steele that the records were available for review during normal business hours or alternatively, copies would be provided upon receipt of payment of \$.84.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Coroner is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Coroner's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

If the Coroner did not receive the request, it was not obligated to respond to it. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Coroner received the request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Coroner received Mr. Steele's records request and failed to respond to it, it is my opinion that it acted contrary to the APRA. Alternatively, if the Coroner never received Mr. Steele's records request, it did not violate the APRA.

The Coroner has provided that upon being notified of Mr. Steele's request and formal complaint that was filed, it responded to Mr. Steele pursuant to the requirements of the APRA. The Coroner indicated to Mr. Steele in a letter dated October 24, 2011 that twenty-one (21) pages of records responsive to his request would be mailed to him upon receipt of payment of \$.84. As such, it is my opinion that the Coroner would not have violated the APRA if it would have responded to Mr. Steele's original records request in such fashion.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with the first letter "J" being particularly large and stylized.

Joseph B. Hoage
Public Access Counselor

cc: Howard Steele, Andrea Brandes Newsom